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1 District of Columbia
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3 California
4 Illinois
5 Pennsylvania
6 New Jersey
7 Oregon
8 Massachusetts
9 Connecticut

February 7, 2023

VIA ECF

Honorable Jeremiah J. McCarthy
United States Magistrate Judge
Robert H. Jackson Unites States Courthouse
2 Niagara Square
Buffalo, NY 14202

Re: McDay v. Eckert, et al.
Case No. 20-cv-233 (JLS)(JJM)

Dear Magistrate Judge McCarthy:

On January 30, 2023, I filed a letter with the Court (Dkt. # 144) on behalf of all the correction officer Defendants, detailing a number of issues with respect to the two subpoenas served by Plaintiff on January 19, 2023; copies of the various subpoenas were attached to my letter. The parties did meet and confer on February 1, 2023, with limited success in addressing the issues raised in my January 30, 2023 letter.

I am writing to respectfully ask that the arguments and assertions in my letter dated January 30, 2023 (Dkt. # 144) be treated as our client, Melvin Maldonado's objection to/ request to quash or modify the two (2) subpoenas served by the Plaintiff on January 19, 2023 on the New York State Department of Corrections and Community Supervision, Records Access Office/General Counsel pursuant to FRCP 45, requesting in combination, production of:

-- all use of force/unusual incident reports where Officer Maldonado was involved or present as a witness, without regard to whether such incident reports relate to a claim of use of excessive force;

-- all Office of Special Investigations (OSI) investigative files, reports, etc. relating to any allegation of misconduct by Officer Maldonado, without regard to whether such allegations were found to be unsubstantiated by OSI;

-- all grievances, complaints and letters of complaint by incarcerated individuals at Wende alleging any type of misconduct by Officer Maldonado and documents showing whether the allegations were investigated, and whether disciplinary charges were brought and the disposition of same;



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-- the complete OSI investigative files for cases listed (numbering eight) in the subpoena as related to Officer Maldonado, several of which have no associated IAD case number and all but two of which date back to 2009-2010, many years before the time of the allegations in this matter;

-- the complete personnel files, institutional files – including pre-employment psychological screening tests and evaluations- and documents reflecting filing of disciplinary charges of any kind or action against Officer Maldonado dating back to the date of his appointment in early 2004.

Attached and incorporated herein are copies of the subpoena to DOCCS (returnable to Plaintiff's counsel) (at Exhibit "1"), and the separate subpoena specific to Officer Maldonado's personnel file related documents, which is returnable to my office (at Exhibit "2").

Should the Court determine that the complete personnel file of Officer Maldonado is to be produced to my office pursuant to the terms of the subpoena, I will review the file and redact personal/private information and maintain a privilege log pursuant to the.

Limited agreement was reached with Plaintiff's counsel during our meet and confer on February 1, 2023. Consensus was reached that with respect to the personnel files that would be sent to defense counsel pursuant to the one subpoena, defense counsel will identify any records on a privilege log for which defense counsel believes the documents may be too sensitive or personal. Plaintiff's counsel will then determine whether to move against items listed on the privilege log.

Plaintiff's counsel would not remove the request for pre-employment psychological screening tests and evaluations, indicating if such documents contained information defense counsel found "too sensitive or personal", such documents should be included on a privilege log. On behalf of Defendant Maldonado, our objection is that even identifying such documents on a privilege log with any level of specificity releases too much sensitive/personal information given the very nature of those pre-employment psychological screening and evaluation documents. Therefore, I reiterate and maintain my objections to the subpoena request for those documents on behalf of Officer Maldonado as stated in my January 30, 2023 letter (Dkt. #144).

With respect to disciplinary records, Plaintiff's counsel would not limit the requests made in order to remove disciplines which, for example, go to matters not

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related to use of force, such as time and attendance related disciplines. Therefore, on behalf of Officer Maldonado, I reiterate and maintain my objections to/request to quash or modify, the subpoena request for those documents on behalf of Officer Maldonado as stated in my January 30, 2023 letter (Dkt. #144) (*i.e.*, as to the time period requested as well as the scope/nature of the disciplines requested).

Thank you for your anticipated addressing of these issues on February 9th.

Very truly yours,

LIPSITZ GREEN SCIME CAMBRIA LLP

By: /s/Diane M. Perri Roberts
Diane M. Perri Roberts, Esq.

DMR/ras

cc: All Counsel (via ECF)